IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE K. MOHAN RAM

Crl.O.P.No.30838 of 2007

Subramanian @ Ravi Subramanian .. Petitioner/Accused

-Vs.-

The State, represented
by the Additional Superintendent of Police,
Special Investigation Team,
Kanjipuram. .. Respondent/Complainant

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure to direct the learned Principal Sessions Judge at Puducherry to permit the counsel for the petitioner to peruse the case bundles and also furnish the certified copies of the documents in S.C.No.94/2005 as required by the petitioner on payment of Costs.

For Petitioner : Mr. K.G.Senthil Kumar

For Respondent : Mr. Hasan Mohamed Jinnah
Government Advocate (Crl. Side)

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O R D E R

The above petition has been filed in the following circumstances:

The petitioner is an accused in S.C.No.94 of 2005; he has been tendered pardon and he has been taken as an approver and hence he is still under custody; according to the petitioner the trial is pending for more than 2 ½ years and he is languishing in prison and with a view to move a petition for bail, the petitioner filed a copy application in S.R.No.8574 of 2007 dated 17.08.2007 before the Court below seeking certified copies of F.I.R., remand report, confession statement and order tendering pardon etc. but the said application has been returned with an endorsement that the provisions of Cr.P.C. or Rules under Cr.P.C. or any other authority has to be mentioned. Being

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aggrieved by that, the petitioner has filed the above Criminal Original Petition for a direction to permit the counsel for the petitioner to peruse the case bundles and also furnish the certified copies of the documents in S.C.No.94/2005 on payment of Costs.

2. A counter affidavit has been filed by the respondent contending that the petitioner is not legally entitled for the documents sought for herein. It is further contended that once pardon is tendered to the petitioner he becomes a witness and therefore he has no legal right to press for the certified copes of the police records.

3. Heard Mr.K.G.Senthil Kumar learned counsel appearing for the petitioner and Mr. Hasan Mohamed Jinnah, learned Government Advocate (Crl. Side) appearing for the respondent.

4. The learned counsel appearing for the petitioner by relying upon Rule 339 of the Criminal Rules of Practice submits that the petitioner being a party to S.C.No. 94/2005 is entitled to get certified copies of the documents which form part of the record of the criminal case. Rule 339 of the Criminal Rules of Practice reads as follows:

> "339.Copies to be given to parties:- Copies of any portion of the record of a Criminal case must be furnished to the parties concerned on payment of the proper stamp and the authorized fee for copying....."

5. The learned counsel for the petitioner submits that though the petitioner had been granted pardon and taken as approver nonetheless he remains a party to the proceedings and as such he is entitled to get certified copies of the documents as per the above said rules. In support of the above said contention, the learned counsel relied upon the decision of a learned Single Judge of this Court reported in CDJ 2006 MHC 1600 (K.Ramaiah Vs. R.Sudhakara Naidu). In that decision referring to Rule 339 of the Criminal Rules of Practice and other decisions of this Court, the learned Judge has held that the Trial Court cannot refuse to receive the copy application and it is bound to follow Rule 339 in so far as copies are given to the parties are concerned.

6. Countering the said statement, the learned Government Advocate submits that since the petitioner has been granted pardon and is taken as approver, he can only be considered as a witness and he cannot be considered to be a party to the proceedings.

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7. I have carefully considered the submissions made on either side.

8. It is true that once an accused is granted pardon under Section 306 Cr.P.C. he ceases to be an accused and becomes a witness for the prosecution. The petitioner though has been granted pardon and taken as an approver he still continues to be a party to the proceedings since if he fails to testify as per the condition of pardon granted, he is liable to be prosecuted as contemplated in Section 308 Cr.P.C. and as such he has to be considered as a party to the proceedings. The learned Government Advocate (Crl. Side) is unable to substantiate his contention that the petitioner ceases to be a party to the proceedings once he is taken as an approver, with reference to any provisions contained in Cr.P.C.

9. In the considered view of this Court though the petitioner has been granted pardon and taken as an approver, nevertheless he continues to be a party to the proceedings and as such as per Rule 339 of the Criminal Rules of Practice the petitioner is entitled to get the certified copies of the documents sought for by him. It is open to the petitioner to re-present the copy application before the Court below within two weeks from today and on its being so presented, the Court below is directed to receive the same and adhere to Rule 339 of the Criminal Rules of Practice. This petition is ordered accordingly.

Kk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Principal Sessions Judge, Puducherry.

2. The Additional Superintedant of Police,
Special Investigating Team, Kancheepuram.

3. The Public Prosecutor, High Court, Madras.

• 1 cc to Mr. K. G. Senthilkumar, Advocate SR No. 69317/07

TM(CO)
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